IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1478 of 2001
(Old No. 1818 of 1995)

Rakesh S/o Lalua
R/o R/o Mohalla Budh Bazar
Town and Police Station Noorpur,
District Bijnor.

….. Appellant

Versus

The State ……. Respondent

Mr. R.S. Bisht, learned counsel for the appellant.
Mr. G.S. Sandhu, A.G.A. assisted by Mr. Rajeev Mohan Birkhani, Brief Holder for the respondent State.

Hon' ble Prafulla C. Pant, J.

This criminal appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity hereinafter Cr.P.C.), is directed against the judgment and order dated 26.10.1995, passed by learned Additional Sessions Judge / Special Judge (E.C. Act), Dehradun, in Sessions Trial No. 04 of 1995, whereby appellant Rakesh has been convicted under Section 366 and 376 of the Indian Penal Code, 1860 (for brevity hereinafter I.P.C.), years and sentenced to rigorous imprisonment for a period of five years and fine of Rs. 1,500/- (under Section 376 of I.P.C.), and rigorous imprisonment for a period of seven years and fine of Rs. 1,500/- (under Section 376 of I.P.C.).

2) Heard learned counsel for the parties and perused the entire record.

3) Prosecution story, in brief, is that a First Information Report (Ext. A –1) was lodged on 13th September, 1993 (three months after the incident) against the accused / appellant Rakesh that he enticed away and abducted P.W.2 Babita @ Pinki and committed rape of her. On 14.09.1993, the girl was recovered, at about 12:30 P.M., from the custody of accused / appellant, near I.D.P.L. Rishikesh. The police prepared recovery memo (Ext. A –2) regarding said fact. The girl (Babita @ Pinki) was sent for medical examination to the Hospital. P.W. 3 Dr. Sudha Yadav, medically examined the girl and prepared report (Ext. A – 3). For determination of the age, the girl was referred to the Radiologist P.W. 6 Dr. Suresh Mehta. P.W. 4 Sub Inspector Vijay Singh investigated the crime, and on completion of the investigation, submitted charge sheet against accused / appellant for the offences allegedly committed by him punishable under Section 363, 366 and 376 of I.P.C.

4) On receipt of the charge sheet, it appears that the Magistrate concerned, after giving necessary copies to the accused as required under Section 207 of the Cr.P.,C., committed the case to the court of Sessions, for trial. Learned trial court, after hearing the prosecution and the defence framed charge of offences punishable under Section 363, 366 and 376 of I.P.C., against the accused / appellant Rakesh, who pleaded not guilty, and claimed to be tried. On this prosecution got examined P.W. 1 Ram Avtar (informant and father of the girl); P.W. 2 Pinki @ Babita (alleged victim); P.W. 3 Dr. Sudha Yadav (who medically examined the girl); P.W. 4 Sub Inspector Vijay

Singh (Investigating Officer); P.W. 5 Dalip Kumar (Clerk in the office of the Chief Medical Officer) and P.W. 6 Dr. Suresh Mehta (Radiologist). All oral and documentary evidence was put to the accused by the trial court under Section 313 of the Cr.P.C., in real to which he alleged that the evidence adduced against him is false as the girl (Pinki @ Bbita) had gone with him with her own consent. It is also stated by the accused / appellant in his examination under Section 313 of Cr.P.C. that both of them, Babita and the accused, got married on 25.08.1993, before a court. It is also alleged by the accused / appellant that the girl was aged 20 years and she was not minor. However, after hearing the parties, the trial court found the accused / appellant guilty of the offences punishable under Section 366 and 376 of I.P.C. and after hearing him on sentence, sentenced him as mentioned earlier. Aggrieved by said judgment and order, the convicted preferred this appeal before Allahabad High Court in the year 1995, from where the same is received by this Court by way of transfer, under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

5) Before further discussions, it is pertinent to mention here, relevant portion of the report of the Medical Officer, who examined the girl after she was recovered from the accused:

P/V Examination:

Old Healed edges of torn hymen seen.
Vagina admits two fingers easily.
Uterus normal size.
No bleeding from private parts at present.

6) P.W. 3 Dr. Sudha Yadav, who examined the girl and prepared report (Ext. A –3) in which aforesaid observations are made, referred the girl for determination of age to the Radiologist. P.W. 6 Dr. Suresh Mehta, X-rayed the ulna, radius, epiphysis and other parts of the body for determination of the age and opined that the girl is around 18 years of age.

7) P.W. 2 Pinki @ Babita has corroborated the prosecution story by saying that she was enticed away by the accused / appellant under false pretext and was taken to Delhi, Moradabad and Bijnor. She has further stated that she was subjected to rape on the point of knife. However, in the cross examination she failed to give satisfactory answers to the queries as to the court marriage performed between her and the accused, regarding which she was confronted with the photographs (paper Nos. 15 to 19).

8) P.W. 1 Ram Avtar is father of P.W. 2 Pinki @ Babita, who lodged the First Information Report (Ext. A –1) with the police. This witness could not give satisfactory explanation in his cross-examination as to delay in lodging the First Information Report for a long period of three months. It is suspicious that the girl was recovered on the very next day of lodging the First Information Report. As such, the prosecution story as narrated by P.W. 1 Ram Avtar and P.W. 2 Pinki @ Babita, appears to be doubtful and cannot be said to be believable beyond reasonable doubt.

9) As to the age of the girl, P.W. 3 Dr. Sudha Yadav in her cross-examination doesn't rule out that the girl might be aged in between 18 – 20 years. So is the version and cross-examination of P.W. 6 Dr. Suresh Mehta, who is a Radiologist, who says that he cannot rule out, if the girl is over 18 years of age.

10) Paper No. 18-A, filed on behalf of the defence shows that the marriage certificate was issued under the Special Marriage Act, 1954, by Marriage Officer / Sub Divisional Magistrate, Bijnor on 25.08.1993. The trial court has committed error of law in not giving benefit of reasonable doubt to the accused and not considering said document. The birth certificate, paper No. 18-A, shows that the girl was above 18 years of age, as her date of birth is recorded to be 08.10.1974.

11) Learned Public Prosecutor on behalf of the State argued that even if the girl was major, the accused can still be convicted under Section 366 and 376 of I.P.C. for abducting and committing rape on her. Considering the marriage certificate and the circumstances that for three long months she never raised any hue and cry anywhere, that she is being taken by the accused / appellant in the manner alleged by the prosecution, it appears doubtful that she was abducted or subjected to rape in the manner alleged by the prosecution. In the circumstances, this Court is of the view, that the accused / appellant is entitled to the benefit of reasonable doubt, and on its basis it cannot be said that the prosecution has been successful in proving the

Charge of offences punishable under Section 366 of 376 of I.P.C. against the accused / appellant. As such, the accused / appellant is entitled for acquittal of charges framed against him by the trial court.

12) For the reasons as discussed above, this appeal deserves to be allowed. The same is allowed. The impugned judgment and order dated 26.10.1995, passed in Sessions Trial No. 04 of 1995, by learned Additional Sessions Judge / Special Judge (E.C. Act) Dehradun, is hereby set aside. The accused / appellant Rakesh is acquitted of the charges framed against him. He is on bail. He need not to surrender. His bail bonds are cancelled and sureties are discharged.

(Prafulla C. Pant, J.)

Dt. October 16, 2006.
H. Negi